


A U S T I N C I T Y C O U N C I L

AGENDA



Thursday, June 8, 2006

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Public Hearings and Possible Actions RECOMMENDATION FOR COUNCIL ACTION

ITEM 120 PH

Subject: Conduct a public hearing and consider an ordinance amending Chapter 25-2 of the Austin City Code regarding mobile food establishments. (Recommended by Planning Commission)

Additional Backup Material

(click to open)

-  [Commission action](#)
-  [Staff report and Ordinance](#)

ORDINANCE AMENDMENT REVIEW SHEET

Amendment: C20-06-007

Description:

Conduct a public hearing and consider an ordinance amending Section 25-2 of the City Code to establish regulations related to mobile food establishments. The regulations address where mobile food establishments may be located and how they may operate.

Background:

This mobile food establishment amendment was initiated by the City Council on April 20, 2006 and sponsored by Council Member Raul Alvarez, Council Member Betty Dunkerley and Council Member Lee Leffingwell. A copy of a draft ordinance with suggested language was provided by Council Member Alvarez and addressed where a mobile food establishment can locate and exempts these establishments from being required to provide a site plan, revise a previously approved site plan or obtain a site plan exemption prior to the establishment of this use (see Attachment "A").

The purpose of this amendment is to clarify where and how a mobile food establishment may operate within the limited and full purpose jurisdiction of the City of Austin. Currently, a mobile food establishment is not provided for under the City's zoning regulations and is a prohibited use. After consultation with Council Member Alvarez, a draft mobile food establishment ordinance has been prepared and attached to this report as Attachment "B." The draft ordinance provides for a mobile food establishment as a temporary use that would be permitted on private property in all commercial and industrial zoning districts, if they meet the following requirements:

1. they must be licensed by the health authority;
2. must be at least 200 feet from a residential use;
3. may not operate between the hours of 3:00 a.m. and 6:00 a.m.;
4. may not be located within 300 feet of another mobile food establishment facility within the same block on the same side of the street;
5. may not use sound equipment (loud speakers, public address system, amplification system, etc.);
6. may not provide a seating area for customers; and
7. must provide support parking for at least four vehicles.

The ordinance also provides that a mobile vending use is an accessory use and not subject to the above requirements, if it is located on the same site as a restaurant (limited) or restaurant (general) use; and serves food provided by the restaurant (limited) or restaurant (general) use.

A temporary use does not require site plan approval, a revision to a previously approved site plan or a site plan exemption to operate; however, a temporary use does require an application that must include a diagram and a description of the use (See Section 25-2-992). A temporary use may continue for not more than one year and provides that an applicant must file a new application to continue a temporary use beyond that period.

Departmental Comments:

Staff recommends his amendment with the following changes:

- 1) To modify Part 1, paragraph (F)(3)(e) of the draft ordinance to allow two (2) mobile food establishments to operate within the same block or within 300 feet of each other.
- 2) To modify Part 1, paragraph (F)(4) of the draft ordinance to modify the existing language that would address exterior sound equipment operated by the mobile food establishment vendor, and prohibit exterior sound equipment or mechanical equipment from exceeding 70 db at a residential property line.
- 3) A mobile food establishment use must setback at least 50 feet from a mixed use residential building (ex. a building with retail or office uses on the first floor and residential units above.)
- 4) A mobile food establishment use must setback at least 20 feet from a restaurant (limited) or restaurant (general) land use. *Currently, the Watershed Protection and Development Review Department regulates permits for certain vendors that operate within the street right-of-way. The Watershed Protection and Development Review Department prohibits these temporary street vendors to sell a similar product within 20 feet of the customer entrance of a permanent business selling a comparable type of merchandise*
- 5) No drive-in service (drive-up or drive-through window) is permitted as an accessory use with a mobile food establishment use.
- 6) All area lighting associated with a mobile food establishment use shall be hooded or shielded so that the light source is not directly visible from residential use.
- 7) All signs shall be secured and mounted flat against the exterior of the mobile food establishment use, and may not project more than six (6) inches from the exterior of the use. In addition, a mobile food establishment may not advertise an off-premise use.
- 8) During business hours, a public trash receptacle shall be provided by a mobile food establishment vendor.
- 9) The area adjacent to a mobile food establishment use shall be maintained litter free on a daily basis.

- 10) No permanent water or wastewater connections are permitted to a mobile food establishment.
- 11) Electrical service to a mobile food establishment is prohibited, except via a temporary electrical drop, an onboard electrical generator or other electric connection allowed by the electrical utility.

Other Board and Commission Action:

None at this time.

Staff Recommendation:

Staff recommends the Code amendment with the 11 changes described under Department comments above.

Planning Commission Action:

May 9, 2006: To grant the Staff requested postponement to May 23, 2006. (Vote: 8-0)

May 23, 2006: 1ST MOTION: Recommendation to city council to form a task force to address the issues regarding mobile food establishments, within 90-days. Task force to include representatives of Zoning & Platting Commission; Planning Commission & stakeholders.

[M.DEALEY, D.SULLIVAN 2ND] (Vote: 8-0) G.STEGEMAN – ABSENT

2ND MOTION: Approved staff's recommendation, deleting the 200-foot setback from a residential use.

[C.GALINDO, K.JACKSON 2ND] (Vote: 5-3) C.RILEY, D.SULLIVAN, M.DEALEY – NAY; G.STEGEMAN – ABSENT

City Council Date and Action:

May 25, 2006: Postponed to June 8, 2006 (Vote: 7-0).

June 8, 2006:

<u>Ordinance Readings:</u>	1 st	2 nd	3 rd
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Ordinance Number:

City Staff: Greg Guernsey

Phone: 974-2387

greg.guernsey@ci.austin.tx.us

Ordinance No. _____

*Ordinance out already
handed by CM at 4/20 council
mtg.*

AN ORDINANCE AMENDING CHAPTER 25-2 OF THE CITY CODE TO PROHIBIT SALES FROM A MOBILE FOOD ESTABLISHMENT LICENSED BY THE HEALTH AUTHORITY ON PROPERTY ZONED FOR A RESIDENTIAL BASE DISTRICT; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 25-2 of the City Code is amended by adding a new section 25-2-864 (Mobile Food Establishments) to read as follows:

25-2-864 MOBILE FOOD ESTABLISHMENTS

- (A) This section applies to a mobile food establishment licensed by the health authority.
- (B) The sale of food and beverages from a mobile food establishment located outside the right-of-way on property zoned as a residential base zoning district is prohibited.
- (C) Notwithstanding any other provision of this code, the sale of food and beverages from a mobile food establishment located outside the right-of-way on property zoned as a commercial or industrial base zoning district is permitted.
- (D) The sale of food and beverage from a mobile food establishment at a site does not constitute a change of use or development of the site, and does not require approval and release of a site plan under Section 25-5-61, a revision to a released site plan under Section 25-5-61, or a site plan exemption under 25-5-2.

PART 2. The Council finds that the clarification of its policy that mobile food establishments may operate on non-residential private property within the City of Austin constitutes an emergency. Because of this emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health and safety.

ORDINANCE NO.

**AN ORDINANCE AMENDING SECTION 25-2-921 OF THE CITY CODE
RELATING TO TEMPORARY USES AND MOBILE FOOD
ESTABLISHMENTS.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Section 25-2-921 (*Temporary Uses Described*) of the City Code is amended to reletter Subsection (F) as Subsection (G) and to add a new Subsection (F) to read:

- (F) This subsection applies to a mobile food establishment located on private property.
- (1) Mobile food establishment has the meaning defined in Section 229.162 (*Definitions*) of the Texas Administrative Code and Section 10-3-1 (*Definitions*) of the City Code.
- (2) A mobile food establishment is not permitted on private property except as provided in this subsection.
- (3) A mobile food establishment:
- (a) must be licensed by the health authority;
 - (b) is permitted in all commercial and industrial zoning districts;
 - (b) may not be located 200 feet or less from a residential use;
 - (c) may not operate between the hours of 3:00 a.m. and 6:00 a.m.; and
 - (e) may not be less than 300 feet from another mobile food establishment on the same side of the street and in the same block.
- (4) Sound equipment, as defined in Section 9-2-1 (*Definitions*), may not be used in association with a mobile food establishment.
- (5) A seating area for customers of the mobile food establishment is prohibited.

ATTACHMENT "B"

- 1 (6) Space must be available to support parking for at least four vehicles.
- 2 (7) A mobile food establishment is an accessory use and not subject to the
- 3 subsection if it:
- 4 (a) is located on the same site as a restaurant (limited) or restaurant
- 5 (general) use; and
- 6 (b) serves food provided by the restaurant (limited) or restaurant
- 7 (general) use.

8 **PART 2.** This ordinance takes effect on _____, 2006.

9 **PASSED AND APPROVED**

10 _____, 2006

11 \$

12 \$

13 \$

14 Will Wynn
15 Mayor

16 **APPROVED:**

17 David Allan Smith
18 City Attorney

19 **ATTEST:**

20 Shirley A. Gentry
21 City Clerk

ARTICLE 6. TEMPORARY USES.

§ 25-2-921 TEMPORARY USES DESCRIBED.

(A) The following may be permitted by the building official as temporary uses under this division:

(1) model homes or apartments and related real estate services, if the use is located within the residential development to which the use pertains;

(2) a circus, carnival, rodeo, fair, or similar activity, if the use is located at least 200 feet from a dwelling and located in a CS or less restrictive zoning district;

(3) an outdoor art or craft show or exhibit, if the use is located in an LR or less restrictive zoning district;

(4) Christmas tree sales;

(5) an on-site construction field office, if the use is located in a portable structure and conducted for not more than 6 months;

(6) seasonal retail sale of agricultural or horticultural products, if the use is located at least 200 feet from a dwelling and located in an LR or less restrictive zoning district;

(7) seasonal day care, if the use is conducted for not more than eight hours a day and not more than 30 days a year; and

(8) temporary day care, if the use is conducted for not more than eight hours a day and not more than 12 hours a week.

(B) A sales office for a new subdivision may be permitted as a temporary use under this division if the sales office is located within the subdivision and at least 200 feet from existing dwellings outside the subdivision.

(1) A sales office for a new subdivision may not be operated after:

(a) the expiration of four years from the date the first construction permit issued in the subdivision; or

(b) the date by which 95 percent of the lots are sold.

(2) The board of adjustment may grant an extension of the deadlines described in this subsection.

(C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:

(1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district;

(2) for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district; or

(3) for an exhibit, the use is located in a GR or less restrictive zoning district.

(D) A single dwelling located in a mobile structure on a construction site may be permitted as a temporary use under this division if the building official determines that the dwelling is required to provide security against nighttime theft or vandalism. The building official may allow the use for a period of up to 6 months and, if requested by the applicant, may extend that period for an additional 6 months. An applicant may appeal to the board of adjustment a denial of the use by the building official.

(E) An outdoor special sale, including a swap meet, flea market, parking lot sale, or similar activity may be permitted as a temporary use under this division if the use is located in a commercial or industrial zoning district. An outdoor special sale may be conducted on not more than three days in the same week and not more than five days in the same month.

(F) The building official may permit other temporary uses that are similar to those described in this section.

Source: Section 13-2-321; Ord. 990225-70; Ord. 031211-11.

§ 25-2-922 APPLICATION; APPROVAL; AND EXTENSION.

(A) A person may file an application to conduct a temporary use with the building official. The person must file the application at least ten days before the requested date for beginning the temporary use.

(B) An application must include a diagram and description of the use and all additional information required by the building official to make a determination under this division.

(C) After making a determination under Section 25-2-923 (*Determinations*), the building official shall approve, conditionally approve under Section 25-2-924 (*Conditions Of Approval*), or deny an application for a temporary use not later than the 10th day after the date the application is filed.

(D) If the building official approves or conditionally approves a temporary use, the building official shall issue a building permit, certificate of occupancy, or temporary use permit.

(E) Except as provided in Subsection (F), the building official may renew or extend an authorization for a temporary use if requested by the applicant.

(F) Unless further limited by the requirements of this division, a temporary use may continue for not more than one year. An applicant must file a new application to continue a temporary use beyond that period.

Source: Sections 13-2-324 and 13-2-325; Ord. 990225-70; Ord. 031211-11.

§ 25-2-923. DETERMINATIONS.

The building official may permit a temporary use after determining that the temporary use:

- (1) will not impair the normal, safe, and effective operation of a permanent use on the same site;
- (2) will be compatible with nearby uses;
- (3) will not adversely affect public health, safety, or convenience;
- (4) will not create a traffic hazard or congestion; and
- (5) will not interrupt or interfere with the normal conduct of uses and activities in the vicinity.

Source: Section 13-2-323; Ord. 990225-70; Ord. 031211-11.

§ 25-2-924. CONDITIONS OF APPROVAL.

The building official may condition the approval of a temporary use on compliance with additional requirements that the building official determines are necessary to ensure land use compatibility and minimize adverse effects on nearby uses, including requirements for hours of operation, frequency of use, parking, traffic circulation, screening, enclosure, site restoration, and cleanup.

Source: Section 13-2-322(b); Ord. 990225-70; Ord. 031211-11.

§ 25-2-925. SITE RESTORATION.

On termination of a temporary use, the person engaging in the temporary use shall remove all debris, litter, and other evidence of the use from the site.